

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH
JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Petitioner,

v.

WINSTAR GATEWAY NETWORK,
INC., a foreign corporation

Respondent.

ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Tennessee, by and through John Knox Walkup, the Attorney General & Reporter, ("Attorney General or State") on behalf of the Tennessee Division of Consumer Affairs and WinStar Gateway Network, Inc. of Dallas, Texas, ("WGN"), as evidenced by their signatures, do consent to the entry of this Assurance of Voluntary Compliance ("Assurance") and its provisions. WGN enters into this Assurance solely to avoid the time and expense associated with litigation. WGN denies any wrongdoing as alleged by the Attorney General. This Assurance does not constitute any evidence or admission of any kind regarding any allegation set forth herein or in the State's Petition. This Assurance does not constitute a finding by any court that WGN has engaged in any act or practice declared unlawful by the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*, or any other laws, rules or regulations. This Assurance only resolves matters relating to alleged slamming activities by WGN known to the State which occurred prior to entry of this Assurance, which the Attorney General has reason to believe resulted in WGN violating the State of Tennessee's consumer protection and unfair trade practices act.

WITNESSETH: Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

WHEREAS, the Attorney General conducted an investigation of specific business practices of WGN, which is in the business of providing long distance telephone services from its principal place of business in Dallas, Texas. As a result of this investigation, the Attorney General and the Division of Consumer Affairs have reason to believe that certain acts and practices of WGN have violated the unfair and deceptive trade practices and consumer protection acts or laws of the State of Tennessee by switching consumers to WGN's long distance network without their authorization or consent. The Attorney General acknowledges that WGN has cooperated with the State in the resolution of the State's concerns.

WHEREAS, WGN states that it took independent corrective measures to provide consumer restitution and to resolve the State's concern arising from the slamming activities.

WHEREAS, WGN desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation. By entering into this Assurance, WGN makes no admission of liability or fault and WGN specifically denies the State's allegations.

NOW, THEREFORE, WGN gives, and the Attorney General accepts, the following assurances:

I. VENUE AND JURISDICTION

1.1 Jurisdiction of this Court over the subject matter herein and over the person of WGN for the purposes of entering into and enforcing this Assurance is admitted. Jurisdiction is retained by this Court for the purpose of enabling the Attorney General or WGN to apply for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Chancery Court of Davidson County, Tennessee.

II. DEFINITIONS

2.1 As used in this Assurance, the following terms shall have the following meanings:

A. A local exchange carrier ("LEC") is a consumer's local telephone company.

B. An interexchange carrier ("IXC") is a person or entity which is engaged in the trade or commerce of selling or reselling long distance telephone time or services to consumers, or time to other IXC's. WGN is an IXC.

C. A primary interexchange carrier ("PIC") is the long distance telephone service company selected by a consumer to be his or her primary long distance carrier.

D. A "PIC change" is a change or switch of a consumer's long distance telephone services from his or her current long distance carrier to a different company. Pursuant to Subpart K of 47 C.F.R. § 64.1100

(a) - (c) of Federal Communications Commission ("FCC") Regulations, a PIC change generated through telemarketing by an IXC may be submitted to a LEC after the IXC has received a written or electronic request from a consumer, or, upon confirmation of a consumer's oral request by an appropriately qualified and independent confirmation company operating in a location physically separate from the telemarketing representative.

E. A consumer's written authorization to an IXC to authorize a PIC change is typically referred to as a letter of agency ("LOA"). The Federal Communications Commission ("FCC") requires certain information and disclosures to be contained in an LOA. The requirements for an LOA are described in the FCC Report and Order as codified at 47 C.F.R. § 64.1150.

III. BUSINESS PRACTICES

Accordingly, it is hereby agreed by the WGN, immediately upon the execution of this Assurance, it shall undertake and implement the following and continue henceforth:

3.1 WGN shall not directly or indirectly represent to any person that a consumer has authorized the transfer of their long distance service from any long distance carrier to WGN without the express authorization of the consumer or the consumer's authorized representative;

3.2 Prior to receiving an affirmative response from a consumer, or the consumer's authorized representative, WGN shall clearly and conspicuously disclose to each consumer solicited that the acceptance of WGN's long distance services will result in a monthly charge in addition to the charges assessed for long distance telephone calls placed by the consumer, if such a monthly fee will, in fact, be charged;

3.3 WGN shall comply with the verification requirements of 47 C.F.R. § 64.1100 (attached hereto as Exhibit 1 and incorporated fully by reference) as those requirements are from time to time amended with regard to orders for long distance service obtained by WGN's outbound telemarketing;

3.4 WGN shall comply with the form and content requirements of 47 C.F.R. § 64.1150 (attached hereto as Exhibit 2 and incorporated fully by reference) as those requirements are from time to time amended with regard to orders for long distance service obtained by WGN using written LOA;

3.5 WGN shall comply with the State of Tennessee's laws relating to sweepstakes and prize, gift and award offerings, Tenn. Code Ann. § 47-18-120;

3.6 WGN shall comply with the State of Tennessee's unfair or deceptive trade practices and/or consumer protection laws, Tenn. Code Ann. § 47-18-101, *et seq.*;

3.7 WGN shall comply with the State of Tennessee's laws, regulations and rules regarding the switching of a consumer's long distance carrier;

3.8 WGN shall not directly or indirectly state that the Attorney General, the Division of Consumer Affairs, any state public utility commission, or any other governmental unit of the State of Tennessee has approved, sanctioned, or authorized any practice, act, or conduct of the WGN, if such is not the case;

3.9 WGN shall include in its present and future training materials distributed to all agents, employees and representatives of WGN involved in the soliciting of consumers' long distance service, instruction sufficient to inform such agents, employees and representatives of the terms and requirements for compliance with the terms of this Assurance; and

3.10 For written complaints received after the date of entry of this Assurance, the WGN shall, furnish to the Attorney General upon written request, within thirty (30) days from receipt of the request, proof of verification of any PIC change initiated by WGN, which a consumer located in the State of Tennessee has disputed by complaining to the Attorney General, any of the state's consumer affairs agencies, the Federal Trade Commission, any of the state's public utility commissions or the consumer's LEC. Written complaints shall include telephonic complaints from consumers received by any state agency that are forwarded by that agency in writing to WGN. However, this provision shall not apply to reports, lists or other documents generated by LEC's purporting to represent consumer PIC disputes, complaints made by the LEC's in a consumer's name or on a LEC form provided in connection with a campaign to recapture or obtain customers.

IV. RESTITUTION

4.1 For a period of 120 days from the date this Assurance is signed by both parties, WGN shall accept , through or from any governmental agency, Better Business Bureau, the consumer's LEC, and/or the consumer written consumer complaints, which allege that the consumer was slammed. (Written complaint shall be defined as set forth in paragraph 3.10. However, the definition shall in no way prevent the State from submitting complaints that were received or filed with the State prior to the date of entry of this Assurance.) With respect to such complaint wherein it is alleged that WGN instituted an unauthorized conversion of the consumer's Primary Interexchange Carrier ("PIC"), WGN to the extent it has not already done so, will provide restitution as follows:

(a) refund any PIC-change fees that were charged to the consumer as a result of the alleged unauthorized conversion, except this shall not apply to consumers who have already received a full credit or refund of such charges;

(b) refund any monthly service fees paid for WGN's services; and

(c) for consumers who send re-rating documentation to WGN, re-rate the calls billed by WGN to reflect no more than the lesser of the amount billed by WGN or the amount that would have been billed by the consumer's previous PIC at the rate(s) being charged by that carrier to the consumer at the time the consumer was switched to WGN's service. The

restitution outlined in (a) - (c) above may be in the form of a refund check to the consumer or a credit to the consumer's telephone bill. Any credits issued must be generally applicable to the consumer's telephone service. Checks shall be backed by good and sufficient funds and may be clearly and conspicuously marked that it may only be deposited by the consumer for a period of ninety (90) days, if such is the case.

4.2 WGN shall process the above refunds and re-rates as soon as practicable and within thirty (30) days of receiving a complaint, and will provide the consumer with either a refund check, written notification of the amount that will be credited to the consumer's telephone bill within two billing cycles after the date of the written notification, or a letter requesting that the consumer provide, within thirty (30) calendar days, complete or sufficient information for re-rating. If a consumer provides incomplete or insufficient information to WGN so that it cannot determine the amount of the refund or credit, if any, to which the consumer is entitled, WGN shall have an additional twenty (20) days to collect the needed information and complete the notification process. Should WGN deny a consumer's request for a refund, it shall provide the consumer and the Attorney General, within ten (10) days of that denial, the written reason for that denial which also sets forth the amount in dispute and a copy of the relevant records used to substantiate the denial.

4.3 WGN shall be required to send the letter attached as Exhibit 3 (incorporated herein by reference), when necessary to request information relating to re-rating to consumers.

(a) No other materials, including promotional materials, may be included in this mailing to consumers (except the refund check or notice of a credit).

(b) The letter required by this section must be mailed via first class postage paid mail through the United States Postal Service. The mailing must be sent in envelopes identical to those attached as Exhibit 4 (incorporated herein by reference). In the event any envelope is returned with a corrected or forwarding address, WGN shall again send the mailing to the consumer via first class postage paid mail through the United States Postal Service to the corrected or forwarding address.

4.4 WGN shall be required to send the letter attached as Exhibit 5 (incorporated herein by reference) to each consumer when forwarding a refund check or a notice of a credit being issued to a consumer. Such letter shall be mailed in conformity with paragraphs 4.3(a)-(b).

4.5 WGN is responsible for all costs associated with the restitution process set forth in subsection 4, including but not limited to, all costs associated with the issuing the checks and credits, all letterhead, envelopes, copying charges, postage and costs.

4.6 In the event WGN is unable to locate Tennessee consumers entitled to restitution under this Assurance whose checks are returned as undeliverable or who fail to deposit the checks, those funds due such Tennessee consumers shall be treated as unclaimed property in the possession of the State of

Tennessee pursuant to the Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. § 66-29-101, *et seq.* These funds may be delivered to the Treasurer prior to the statutory due date of one (1) year set forth in Tenn. Code Ann. § 66-29-110, covering unclaimed property held by courts, public officers and agencies. WGN shall provide whatever information is needed by the Treasurer to handle the funds as unclaimed properties. WGN agrees to use its good faith efforts relating to compliance with paragraph 4.6.

V. REPORTING REQUIRED RELATING TO RESTITUTION PROCESS

5.1 Within 180 days of signing this Assurance, WGN shall provide the Attorney General with a letter advising the Attorney General of the total amount of LEC credits and restitution checks distributed by WGN in the State of Tennessee under this Assurance to the date of the letter. At a minimum that letter shall include the following:

(a) A letter identifying the process used by WGN to complete the restitution process required by this Assurance and verifying and certifying that in fact that process was followed.

(b) An alphabetical list of the name and address of each consumer in the State of Tennessee who requested a refund, the amount of each consumer's restitution, and the total amount of all restitution provided in the State of Tennessee.

5.2 Further, within thirty (30) days of receipt of a written request from the State for evidence that a specific consumer has received or requested a refund, WGN shall provide copies of any documents, books and/or records necessary to establish to the satisfaction of the State that the WGN has fully complied with the refund process in this Assurance. WGN shall retain all originals and shall make the original available upon request by the State. These materials to the extent they exist may include, but shall not be limited to, copies of the front and back of canceled checks, records of credits issued and/or mailing records indicating that the identified consumer or consumers received restitution. The materials shall be physically turned over and provided to the requesting State no later than thirty (30) days from receipt of such request. This paragraph shall in no way limit the Attorney General's right to obtain documents, records and/or testimony through any other state or federal law, regulation or rule.

VI. REPRESENTATIONS AND WARRANTIES

6.1 This Assurance is the result of good faith negotiations. The parties warrant that they will implement the terms of this Assurance in good faith.

6.2 WGN represents that signatories to this Assurance have authority to act for and bind the WGN.

6.3 WGN will not form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance. 6.4 Acceptance of this Assurance by the State of Tennessee shall not be deemed approval

by the State of any of WGN's advertising or other business practices.

6.5 WGN warrants and represents that it is the proper party to this Assurance.

6.6 WGN represents that WinStar Gateway Network, Inc., is the true legal name of the entity entering into this Assurance.

6.7 This Assurance may only be enforced by the parties hereto.

6.8 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

6.9 This Assurance constitutes the complete agreement of the parties.

6.10 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. The parties understand that this settlement shall not be construed as an approval or sanction by the State of Tennessee or by the Attorney General, of WGN's business practices or conduct. The parties further agree that this Assurance shall fully and finally resolve any and all Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. 47-18-101, *et seq.* claims or allegations of unfair, deceptive, or misleading trade practices, including sweepstakes, gift, award, and slamming laws that were known or could have been known by the State of Tennessee as of the date of this Assurance. This Assurance is entered into between the Attorney General and WGN for the purpose of resolving this cause or matter, that this settlement does not bind any other offices or agencies of the State of Tennessee who have independent enforcement authority to prosecute slamming violations or issues arising from such conduct; and that this settlement shall not be construed to, nor does it, resolve or preclude any other action, civil or administrative which may be pending or may subsequently be brought by another office or agency of the State of Tennessee.

6.11 This Assurance shall be binding and effective against WGN upon WGN's execution of the Assurance.

6.12 This document shall not be construed against the drafter because both parties participated in the drafting of this document.

VII. COMPLIANCE WITH ALL LAWS

7.1 Nothing in this Assurance shall be construed as relieving WGN of the obligation to comply with all state or federal laws, regulations or rules.

VIII. APPLICABILITY OF ASSURANCE TO WGN AND ITS SUCCESSORS

8.1 WGN agrees that the duties, responsibilities, burdens and obligations undertaken in connection with

this Assurance shall apply to it and be the responsibility of, each of its officers, directors, managers, agents acting on its or their behalf.

IX. COURT COSTS

9.1 All court costs associated with the filing of this Assurance shall be borne by WGN.

X. POSSIBLE FUTURE CHANGES IN 47 C.F.R. 64.1100 AND 47 C.F.R. 64.1150

10.1 In the event that the provisions of 47 C.F.R. § 64.1100, 47 C.F.R. § 64.1150 or any other state or federal law or regulation are amended, or in the event that any other law or regulation is enacted in a manner which would render compliance with any term of this Assurance a violation of such law or regulation, it is understood that WGN's compliance with such amended or newly enacted law or regulation will constitute compliance with this Assurance. The remainder of the terms and conditions of this Assurance shall not be effected thereby.

XI. FAILURE TO COMPLY

11.1 Pursuant to Tenn. Code Ann. § 47-18-107(c), unless this Assurance has been rescinded by agreement of the parties or voided by a Court for good cause, subsequent failure to fully comply with the terms of this Assurance is prima facie evidence of a violation of the State of Tennessee's unfair or deceptive trade practices act or consumer protection laws.

11.2 Pursuant to Tenn. Code Ann. § 47-18-107(f), WGN understands that any knowing violation of the terms of this Assurance is punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties. WGN agrees to pay all court costs and attorneys' fees associated with any successful petitions to enforce this Assurance and Agreed Order against the WGN.

XII. PAYMENTS TO THE STATE

12.1 WGN agrees to pay to the State of Tennessee the total sum of Thirty Thousand Dollars (\$30,000.00). Said payment shall be made by providing the Attorney General's representative on the day of execution of this Assurance with a certified or cashier's check(s) made payable to the State of Tennessee. The check shall be sent to: Consumer Protection Division, c/o Cynthia Carter, Deputy Attorney General, 425 - 5th Avenue North, Nashville, Tennessee, 37243-0491. The payment to the State shall be used for the purposes set forth as follows:

(A)WGN shall pay the sum of Nineteen Thousand Five Hundred and 00/100 Dollars (\$19,500.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of

the Attorney General.

(B)WGN shall pay the sum of Ten Thousand Five Hundred and 00/100 Dollars (\$10,500.00) to the State of Tennessee as a payment to the General Fund of the State of Tennessee. This payment shall in no way be construed as a fine or civil penalty.

The parties understand that when signed, this Assurance will be filed and placed on the public record.

It is so ORDERED, ADJUDGED AND DECREED.